

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

NORBERTO MIRANDA-VALDEZ,  
Plaintiff,  
  
vs.  
  
UNITED STATES OF AMERICA,  
Defendant.

CASE NO. 14cv365-MMA (PCL)  
  
**ORDER DISMISSING CIVIL  
ACTION WITHOUT  
PREJUDICE FOR FAILING TO  
PAY FILING FEE REQUIRED  
BY 28 U.S.C. § 1914(a) AND  
FAILING TO MOVE TO  
PROCEED *IN FORMA*  
*PAUPERIS* PURSUANT TO 28  
U.S.C. § 1915(a)**

[Doc. No. 1]

On February 14, 2014, *pro se* inmate Norberto Miranda-Valdez (“Plaintiff”) filed a Motion for Return of Property Pursuant to Rule 41(g) (“Motion for Return of Property”). Specifically, Plaintiff seeks the return of a 1994 Nissan Sentra, a personal wallet, jewelry, keys, and two cellular phones. The Court has construed the Motion for Return of Property as a civil complaint.<sup>1</sup> All parties instituting any civil action, suit, or proceeding in a district court of the United States, except an

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<sup>1</sup> Plaintiff initiated this action using the standard complaint form used in 42 U.S.C. § 1983 cases. However, the substance of Plaintiff’s pleading demonstrates that he in fact seeks return of property pursuant to Rule 41(g), and does not intend to state a claim under § 1983. Because Plaintiff’s underlying criminal case is no longer pending, the Motion for Return of Property is construed as a civil complaint seeking equitable relief, and subject to the Federal Rules of Civil Procedure. *See United States v. Ritchie*, 342 F.3d 903, 906 (9th Cir. 2003) (“If a Rule 41[(g)] motion is filed when no criminal proceeding is pending, the motion is treated as a civil complaint seeking equitable relief.”); *United States v. Ibrahim*, 522 F.3d 1003, 1007 (9th Cir. 2008) (finding that when no criminal case is pending, a Rule 41(g) motion is governed by the Federal Rules of Civil Procedure).

1 application for writ of habeas corpus, must pay a filing fee of \$400.<sup>2</sup> See 28 U.S.C.  
 2 § 1914(a). An action may proceed despite a plaintiff's failure to prepay the entire  
 3 fee only if the plaintiff requests and is granted leave to proceed *in forma pauperis*  
 4 pursuant to 28 U.S.C. § 1915(a). See *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th  
 5 Cir. 1999). Here, Plaintiff has not prepaid the \$400 filing fee required to commence  
 6 a civil action, nor has he submitted a Motion to Proceed *in forma pauperis*.

7 Therefore, the case must be dismissed pursuant to 28 U.S.C. § 1914(a).

8 Accordingly, the Court hereby:

9 (1) **DISMISSES** this action *sua sponte* without prejudice for failing to pay  
 10 the \$400 filing fee or file a Motion to Proceed *In Forma Pauperis* pursuant to 28  
 11 U.S.C. §§ 1914(a) and 1915(a); and

12 (2) **GRANTS** Plaintiff forty five (45) days leave from the date this Order is  
 13 filed to: (a) prepay the entire \$400 civil filing fee in full; or (b) complete and file a  
 14 Motion to Proceed IFP which includes a certified copy of his trust account statement  
 15 for the 6-month period preceding the filing of his Complaint.<sup>3</sup> See 28 U.S.C. §  
 16 1915(a)(2); S.D. Cal. Civ.L.R. 3.2(b).

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 23 <sup>2</sup> In addition to the \$350 statutory fee, all parties filing civil actions on or after  
 24 May 1, 2013, must pay an additional administrative fee of \$50. See 28 U.S.C. § 1914(a)  
 25 (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule) (eff. May  
 1, 2013). However, the additional \$50 administrative fee is waived if the plaintiff is  
 granted leave to proceed IFP. *Id.*

26 <sup>3</sup> Plaintiff is cautioned that if he chooses to proceed further with this action either  
 27 by paying the full civil filing fee required by 28 U.S.C. § 1914(a), or moving to proceed  
 28 *in forma pauperis*, his complaint will be screened and may be dismissed *sua sponte*  
 pursuant to 28 U.S.C. § 1915(e)(2)(b). See *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th  
 Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) "not only permits but requires"  
 the court to *sua sponte* dismiss an *in forma pauperis* complaint that fails to state a  
 claim).

1       **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide  
2 Plaintiff with this Court's approved form "Motion and Declaration in Support of  
3 Motion to Proceed *In Forma Pauperis*." If Plaintiff fails to either prepay the \$400  
4 civil filing fee or complete and submit the enclosed Motion to Proceed *In Forma*  
5 *Pauperis* within the specified amount of time, this action shall remain dismissed  
6 without prejudice and without further Order of the Court.

7       **IT IS SO ORDERED.**

8 DATED: February 27, 2014

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10 Hon. Michael M. Anello  
11 United States District Judge  
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